

**MINUTES
MEETING OF THE BOARD OF DIRECTORS
OF THE INDIANAPOLIS DEPARTMENT OF WATERWORKS**

DATE: JANUARY 8, 2002 (Tuesday)

Meeting was called to order by A. Scott Chinn, Counsel for the Board, at 5:30 p.m. in Room 260 of the City-County Building, 200 E. Washington Street, Indianapolis, Indiana.

The following Board Members were in attendance at the meeting: Jack Bayt, Carlton Curry, Barbara Howard, S. Michael Hudson, Alan Kimbell, John Mutz, and Samuel L. Odle.

The Board Members were greeted by A. Scott Chinn and then the Board proceeded immediately to the first item on the Agenda (*See Exhibit A*).

I. Oaths of Members

Suellen Hart, Clerk of the City-County Council, administered the Oath of Office to all Board Members including: Jack Bayt, Carlton Curry, Barbara Howard, Alan Kimbell, John Mutz, and Samuel L. Odle. (*See Exhibit B*).

II. Introduction of Members

Each Board Member introduced himself/herself and gave a brief statement regarding his/her background.

III. Introduction of Board Staff and Consultants

Robert Clifford, Executive Director of the Indianapolis Local Public Improvement Bond Bank, introduced the Board staff and the various consultants including the following:

Michael Claytor, Finance Team (Crowe Chizek)
Beulah Coughenour, City-County Council Member
Kathy Davis, Controller
Buddy Downs, Attorney (Ice Miller)
Robert Elrod, Counsel for the City-County Council
Brenda Horn, Attorney (Ice Miller)
Mark Jacob, Engineer Consultant
Gary Malone, Finance Team (H.J. Umbaugh)
James Merten, Finance Team (City Securities)
John Seaver, Finance Team (H.J. Umbaugh)

Michael Terrell, Attorney (Sommer & Barnard)
George Pendency, Counsel for the City-County Council
Regina Sharrow, Attorney (Sommer & Barnard)
James Strain, Attorney (Sommer & Barnard)

IV. Election of Board Officers

A. Scott Chinn opened the floor for nominations for the Chairperson of the Board.

Jack Bayt nominated John Mutz to be Chairperson of the Board. The nomination was so moved, seconded, and a vote was taken. The Board unanimously approved the nomination of John Mutz as Chairperson of the Board for the year 2002. John Mutz was appointed Chairperson of the Board for 2002.

John Mutz accepted the role of Chairperson of the Board for 2002. Mr. Mutz briefly addressed the challenges that face the Board regarding the purchase of the water company.

Chairperson Mutz opened the floor for nominations for the Vice-Chairperson.

Carlton Curry nominated Samuel Odle to be Vice-Chairperson of the Board. The nomination was so moved, seconded, and a vote was taken. The Board unanimously approved the nomination of Samuel Odle as Vice-Chairperson of the Board for the year 2002. Samuel Odle was appointed Vice-Chairperson of the Board for 2002.

Samuel Odle accepted the role of Vice-Chairperson of the Board for 2002.

V. Nomination/Confirmation/Oath of Secretary-Treasurer

Chairperson Mutz explained the role of the Secretary-Treasurer. Chairperson Mutz stated that the seventh person votes only in the event of a tie. Chairperson Mutz highlighted the requirement that the Board must unanimously agree on the Mayor's nomination for Secretary-Treasurer.

A. Scott Chinn read the letter from Mayor Bart Peterson nominating S. Michael Hudson as Secretary-Treasurer of the Board.

Chairperson Mutz opened the floor for any questions for Mr. Hudson. Mr. Kimbell asked whether each Board member would have an opportunity to review the responses to the Request for Proposals. Mr. Hudson indicated that each Board member would have an opportunity to review the responses. Further, Mr. Curry asked for a "Gentlemen's Agreement" regarding the vote of Secretary-Treasurer in the event of a tie regarding the nomination of the Chairperson. The Board members debated the issue. The issue was not resolved. Mr. Hudson requested that Counsel (Chinn) draft a Resolution regarding the issue.

Chairperson Mutz took a vote on the Mayor's nomination of S. Michael Hudson as Secretary-Treasurer of the Board. The Board unanimously approved the Mayor's nomination of S. Michael Hudson as Secretary-Treasurer of the Board.

Robert Elrod, Counsel for the City-County Council, administered the oath to S. Michael Hudson.

S. Michael Hudson accepted the role of Secretary-Treasurer of the Board.

VI. Resolution adopting Board Procedures

A. Scott Chinn presented Resolution 1, 2002 The Establishment of Rules for the Conduct and Procedures of the Board's Meetings, including Ethical Guidelines for Members. A. Scott Chinn explained the provisions of the Resolution to the Board. (*See Exhibit C*).

After a brief question by Chairperson Mutz regarding the ethical guidelines and conflicts of interest, Carlton Curry moved that the Resolution be approved and adopted by the Board. Jack Bayt seconded the Motion. A vote was taken. Resolution 1, 2002 was unanimously approved and adopted by the Board.

VII. Overview of Transaction and Due Diligence

Chairperson Mutz called on A. Scott Chinn to begin the overview of the transaction.

A. Scott Chinn and Robert Clifford presented an overview of the transaction and explained the due diligence that has occurred by the staff and consultants. Mr. Chinn and Mr. Clifford used the attached power point presentation in providing an overview of the transaction. (*See Exhibit D*).

The Board members asked the following questions during the presentation:

- * Secretary Hudson questioned whether the idea of using "PILOTS" was truly as creative as it appears. Mr. Chinn indicated that precedence exists for "PILOTS".
- * Vice-Chairperson Odle asked how "PILOTS" get calculated. Mr. Elrod explained that the assets are assessed as if the assets were privately owned.
- * Jack Bayt asked about reassessment and the potential for increases. Mr. Elrod indicated that the idea is to keep it neutral. The city should pay the amount that would be due if the assets were privately owned.
- * Chairperson Mutz asked for the amount of property taxes paid by IWC. Mr. Clifford stated that just under \$8 million were paid in 2000.

- * Vice-Chairperson Odle questioned the City's level of control on property assessments going forward. Mr. Elrod indicated that the City would retain the right to appeal property assessments and that the City will continue to pay the determined amount. Mr. Elrod indicated that current law limits the amount the levy can rise.
- * Jack Bayt questioned whether the Board could prevent increases in the amount of tax paid. Mr. Elrod indicated that a commitment has been made that the City will pay the assessed amount going forward.

Mr. Curry highlighted that the water company is a regional company over several counties.

A. Scott Chinn and Robert Clifford highlighted the future steps to come in finalizing the purchase of the water company.

Mr. Kimbell asked about the plan on handling communities not willing to sign an interlocal agreement. A. Scott Chinn indicated that the group would be talking to each of the communities and that the issue would ultimately be decided by the IURC.

VIII. Ratification Resolution

A. Scott Chinn highlighted Resolution No. 2, 2002. Chairperson Mutz asked the Board to consider Resolution No. 2, 2002, during the following discussion.

A. Asset Purchase Agreement

James Strain summarized the Asset Purchase Agreement to the Board members. Some of the items highlighted by Mr. Strain include:

- * The City will be purchasing the water business assets.
- * The purchase will be accomplished by three main components: cash, assumption or defeasance of certain liabilities, and retirement of preferred stock.
- * The statutory authority for the transaction is Ind. Code § 8-1.5-4 et.seq; and Ind. Code § 36-3-4-23.
- * Nisource, the seller, is a public company and they initially wanted a public company deal. Nisource wanted a stock deal.
- * The representations and warranties are not reciprocal.
- * Any public statements made regarding the transaction must be cleared with Nisource.
- * Confidentiality agreement.
- * Standard operating covenants.
- * Benefit plans taken over by manager.

- * Cooperation covenant.
- * Various conditions to closing of the deal.
- * Standard termination provisions.
- * Drop dead date of April 30, 2002.
- * Arbitration provision – unusual provision regarding closing date.
- * All reps and warranties survive closing.
- * Indemnification (\$750K - \$35 million).
- * Assignment provisions.

Questions from the Board members included the following:

- * Chairperson Mutz questioned the confidentiality requirement as it pertains to Board members. Mr. Strain stated that the confidentiality requirement pertains to Board members.
- * Secretary Hudson questioned whether the remonstrations process is jeopardized by the Confidentiality Agreement. Mr. Strain stated that the process is not jeopardized.
- * Mr. Kimbell questioned whether we would receive a tax opinion. Mr. Strain responded that a tax opinion would be received.
- * Mr. Kimbell questioned the time frame of the deal and the reason the deal is proceeding so quickly. Mr. Strain indicated that the time frame was based on concerns of Nisource.
- * Chairperson Mutz highlighted the importance of each aspect of the dealing happening simultaneously. Mr. Strain agreed.
- * Secretary Hudson questioned whether other hurdles have been met. Mr. Clifford indicated that they had.
- * Secretary Hudson asked whether the deal involved goodwill. Mr. Clifford indicated that the deal did involve goodwill.
- * Secretary Hudson questioned whether there were other risks besides environmental risks that are characteristic of water deals. Mr. Strain indicated that other risks exist, but none are as significant as the environmental risks.
- * Vice-Chairperson Odle asked whether the wells were on property that the city will own. Mr. Strain responded that most of the wells are on property that the city will own.
- * Vice-Chairperson Odle questioned how we will keep rates from increasing given the large amount of debt. Robert Clifford indicated that there will be enough revenue to service the debt plus

some capital improvements. Chairperson Mutz indicated that a full discussion of the financial situation will be forthcoming.

- * Secretary Hudson questioned whether shareholder approval is needed. Mr. Strain indicated that shareholder approval is needed.
- * Chairperson Mutz asked whether other liabilities are being assumed. Mr. Strain indicated that we are assuming the disclosed liabilities.

B. IURC Proceedings

Michael Terrell summarized the IURC proceedings for the Board members.

- * In 2000, a petition was filed.
- * Water company appealed; March 6th hearing in front of appellate court.
- * November 26, 2001, the Asset Purchase Agreement was executed.
- * In making a determination, the IURC will analyze the following:
 1. Impact of transaction on existing rates;
 2. Managerial/technical expertise;
 3. Dealings with outer communities; and
 4. Whether deal is in the public interest.
- * February 18th, evidentiary hearing. Very aggressive schedule. Final order anticipated by end of March.

Chairperson Mutz questioned whether the IURC can compel outer regions to enter into the Interlocal Agreement once IURC approval is achieved. Michael Terrell responded that the question is unanswered at this time, but the IURC most likely has that authority. Mr. Terrell indicated that the outer community would need to show how they were planning on providing water service.

C. Request for Qualifications

A. Scott Chinn summarized the Request for Qualifications (“RFQ”). The Request was issued on December 4, 2001.

The City received six (6) responses to the RFQ:

1. American Water Services, Inc.
2. Indiana United Water
3. US Filter Operating Services
4. Earth Tech
5. OMI, Inc.
6. U.S. Water, LLC

D. Request for Proposals

Regina Sharrow presented an overview of the Request for Proposals (*See Exhibit E*). See Exhibit E for timeline.

Regina Sharrow summarized the project goals and the department ownership and control.

Secretary Hudson asked who assumed the various liabilities. Ms. Sharrow indicated that the manager will assume some of the liabilities such as those relating to operations.

George Pendygraft presented an overview of the review of the RFP responses and the selection process (*See Exhibit E*):

- * Secretary will review and evaluate the responses;
- * Specific selection criteria; and,
- * RFP included draft of proposed Management Agreement.

Brenda Horn presented an overview of the Service Fee (*See Exhibit E*). Ms. Horn highlight Rev. Proc. 97-13. Proposed Service Fee structure: 80% fixed fee; 20% incentive fee.

Questions by the Board members included the following:

- * Vice-Chairperson Odle questioned the weighting of customer service and the manager's involvement in the bidding process. George Pendygraft responded that the manager develops the capital plan. The Manager may bid on capital projects. Such projects must go to the Board for approval. Board may use outside consultants to decide on the approval. The water company currently has a significant number of capable employees who can do projects competitively.
- * Chairperson Mutz questioned whether routine operational work would be distinguished from capital projects. Mr. Pendygraft responded that a distinction will exist.
- * Chairperson Mutz and Vice-Chairperson Odle expressed concern on the weighting of customer service.
- * Jack Bayt questioned the 20 year term and whether there are clear termination provisions and whether performance will be tracked. Chairperson Mutz indicated that given the tight cash flow, the manager will have an incentive to perform well and will want out of the deal if they are not receiving the 20% incentive fee.
- * Secretary Hudson questioned whether third parties would assist in the compliance auditing function. George Pendygraft indicated

that the Board will contract with outside parties to assist in the auditing function.

Chairperson Mutz proposed that the Board adopt Resolution 2, 2002. A. Scott Chinn highlighted the items in the Resolution not previously discussed. Chairperson Mutz asked for further discussion. After a brief discussion, a vote was taken. Resolution 2, 2002 was unanimously approved and adopted by the Board.

Description of Proceeds and Utilization of Funds that come from Bond Issue

Robert Clifford introduced the various financial consultants.

James Merten summarized the sources/uses of funds (*See Exhibit F*).

- * Underwriter's Discount;
- * Cost of Issuance;
- * Debt Service Reserve;
- * Capitalized Interest;
- * Defeasance costs;
- * Working Capital;
- * Bond Insurance.

James Merten highlighted current interest rates.

Robert Clifford summarized the potential ratings to be achieved on the bond issue and distributed to the Board members the IURC filings. (*See Exhibit G*).

Gary Malone summarized the cash flow projections and highlighted the responsibility of demonstrating that the following are covered:

- * operating costs;
- * debt service reserve; and
- * capital improvements.

Questions by the Board members included the following:

- * Mr. Kimbell asked whether the projections are based on the current rate structure. Gary Malone indicated that the projections are based on current rates.
- * Vice-Chairperson Odle questioned the ability to meet debt service given the \$35 million capital improvements number. Robert Clifford indicated that it was possible to meet the debt service with some capital improvements without having to increase rates.
- * Chairperson Mutz asked for clarification on the \$10 million in working capital. Robert Clifford indicated that the working capital was for the Board and it would be held in account controlled by the

Controller.

- * Vice-Chairperson Odle questioned whether operating expenses are to be converted to management agreement. Gary Malone responded that the revenues flow through a Revenue Fund which will be controlled by the City Controller. The City Controller will pay the manager once per month.
- * Vice-Chairperson Odle questioned the service fee. Robert Clifford explained the fixed versus incentive portions of the service fee.
- * Chairperson Mutz questioned the \$20 million in “other liabilities”. Robert Clifford responded to his concerns.
- * Chairperson Mutz questioned whether the Underwriter’s discount and the Bond Insurance are negotiable.
- * Secretary Hudson questioned whether there would be additional bond covenants for the Board to review. Robert Clifford responded in the positive.
- * Vice-Chairperson Odle asked about the consulting fees. A. Scott Chinn indicated that the consulting fees would be part of the cost of issuance of the bond issue.

Robert Clifford discussed coverage and the need for capital improvements.

IX. Adoption of Declaratory Resolution

Robert Elrod summarized Declaratory Resolution No. 3, 2002, to the Board members (*See Exhibit H*).

After a brief discussion, it was moved that the Resolution be approved and adopted by the Board. The motion was seconded, and a vote was taken. The Board unanimously approved and adopted the Declaratory Resolution.

The Board set the hearing date: February 22, 2002, @ 4:00 p.m.

X. Resolution Setting Rate Hearing and Authorizing Public Notice of Rate Hearing

A. Scott Chinn presented Resolution No. 4, 2002, to the Board (*See Exhibit I*). After a brief discussion, it was moved that the Resolution be approved and adopted by the Board. The motion was seconded, and a vote was taken. The Board unanimously approved and adopted the Resolution.

The Board set the hearing date: February 22, 2002, @ 5:30 p.m.

XI. Resolution Authorizing Secretary-Treasurer to Review and Report on RFP Responses

A. Scott Chinn presented Resolution No. 5, 2002, to the Board (*See Exhibit J*).

Robert Elrod explained the basis for the Resolution. Jack Bayt questioned whether there would be a limit on fees. After a brief discussion, it was moved that the Resolution be approved and adopted by the Board. The motion was seconded, and a vote was taken. The Board unanimously approved and adopted the Resolution.

XII. Set Hearing Date on Declaratory Resolution and Rate Resolution, Review Upcoming Board Actions, and Set Future Meeting Dates

The next meeting of the Board of Directors was scheduled for February 22, 2002, at 4:00 p.m. in Room 260 of the City-County Building. Initially, the Board will meet and will hold a public hearing regarding the Declaratory Resolution. Then, at 5:30 p.m., the Board will meet and will hold a public hearing regarding the establishment of the initial rates and charges of the Waterworks.

After a brief discussion, the Board set the schedule to meet again on Tuesday, March 5, 2002, at 5:00 p.m. A public hearing will not be held at that meeting.

The bond issue relating to the purchase of the Waterworks assets is scheduled to close the last week in April. Chairperson Mutz asked that the Board Members try to keep their calendars as clear as possible during that week.

There being no other business before the Board, the Board concluded the meeting at 8:45 p.m.